

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

AUSTIN C. BRAND,

Plaintiff,

2:13-cv-00192-TC

v.

FINDINGS AND
RECOMMENDATION

SNAKE RIVER DEPARTMENT
OF CORRECTIONS, et al.,

Defendants.

COFFIN, Magistrate Judge.

Plaintiff was an inmate in the custody of the Oregon Department of Corrections at the time he filed this action alleging that defendants violated his constitutional rights by failing to protect him from another inmate. Plaintiff was subsequently released from the physical custody of the state and has not kept either the court or defendants apprised of his address.

Defendants now move to dismiss or strike plaintiff's complaint (#53) pursuant to Fed. R. Civ. P. 41(b) on the grounds that plaintiff has twice refused to participate in a discovery deposition. Plaintiff has not responded.

Defendants previously moved to dismiss (#45) after plaintiff failed to appear for a duly noticed deposition. By Order (#51) the court denied the motion to dismiss without prejudice to request reconsideration upon documentation of a second unsuccessful attempt to schedule plaintiff's deposition. Defendants have provided the court with such documentation. See Declaration in Support (#54) and Exhibits 1-4 to defendants' Motion to Dismiss (#53).

Defendants' Motion to Dismiss (#53) should be allowed. The Clerk of the Court should be directed to enter a judgment dismissing this action with prejudice.

This recommendation is not an order that is immediately appealable to the Ninth Circuit Court of Appeals. Any notice of appeal pursuant to Rule 4(a)(1), Federal Rules of Appellate Procedure, should not be filed until entry of the district court's judgment or appealable order. The parties shall have fourteen (14) days from the date of service of a copy of this recommendation within which to file specific written objections with the court. Thereafter, the parties have fourteen (14) days within which to file a response to the

objections. Failure to timely file objections to any factual determinations of the Magistrate Judge will be considered a waiver of a party's right to de novo consideration of the factual issues and will constitute a waiver of a party's right to appellate review of the findings of fact in an order or judgment entered pursuant to the Magistrate Judge's recommendation.

An appeal from the Order or Judgement of Dismissal would be frivolous and not taken in good faith. Therefore, plaintiff's in forma pauperis status should be revoked.

DATED this 31 day of October, 2014.



Thomas M. Coffin
United States Magistrate Judge